

**IN THE COURT OF APPEALS OF IOWA**

No. 0-816 / 10-0795  
Filed February 9, 2011

**DONALD A. WESTLING,**  
Petitioner-Appellant,

**vs.**

**HORMEL FOODS CORPORATION,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Carla T. Schemmel  
Judge.

An employee appeals from a district court judicial review ruling affirming in  
part, reversing in part, and remanding the appeal decision of the workers'  
compensation commissioner. **AFFIRMED.**

Mark S. Soldat of Soldat & Parrish-Sams, P.L.C., West Des Moines, for  
appellant.

Valerie A. Landis of Hopkins & Huebner, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., and Doyle and Tabor, JJ.

**DOYLE, J.**

Donald Westling appeals from a district court judicial review ruling affirming in part, reversing in part, and remanding the appeal decision of the workers' compensation commissioner. The issue presented for our review is whether the district court was correct in affirming the commissioner's determination that Westling failed to prove his work-related injury resulted in permanent partial disability.

***I. Background Facts and Proceedings.***

Westling began working at Hormel Foods Corporation in 1976. He suffered a number of injuries while employed there, the most recent of which occurred January 5, 2006. Westling was pulling casings off pepperoni when he felt a sharp pain in his right shoulder. He reported the injury to his foreman the next day and followed up with the company's nurse.

Westling was diagnosed with a rotator cuff strain in February 2006. After a month of physical therapy failed to significantly alleviate his pain, Westling saw an orthopedic surgeon. An MRI showed a partial rotator cuff tear. Surgery was recommended, which Westling delayed for several months while continuing to work full-time at Hormel.

The surgery was eventually performed by Dr. Jason Hough in July 2006. Dr. Hough discovered significant fraying of the anterior and superior labrum and a large anterior spur along the acromion during the surgery. He debrided the frayed anterior and superior labrum, freed the spur along its anterior edge, and removed the anterior acromion hook to the AC joint. He did not discover any articular surface rotator cuff tear during the surgery.

At his follow-up appointment one week later, Westling reported he was “doing quite well.” Dr. Hough referred him to physical therapy and removed him from work for four weeks. The physical therapy notes indicate steady improvement in Westling’s shoulder in the month following his surgery. By mid-August 2006, Westling reported he was “doing much better and doesn’t have much pain at all.” He was released to full-duty work with no restrictions in September 2006. For the next two months, Westling worked at a pillow-pack job in the plant. He retired from Hormel on November 24, 2006, after having worked there for thirty years and one day, entitling him to full benefits.

Once he retired, Westling began dividing his time between Iowa and Florida. He did not look for other employment, instead keeping himself occupied by walking, fishing, gardening, collecting coins and antiques, and occasionally mowing neighbors’ lawns and painting houses. Westling did not seek any further treatment for his right shoulder injury after he left Hormel, although he said it still bothered him from time to time.

In March 2007, Westling filed a petition with the Iowa Workers’ Compensation Commissioner, alleging he had suffered an injury to his right shoulder on January 5, 2006, while working at Hormel. He asserted the injury occurred “[c]umulatively and gradually, overuse syndrome developed into an impingement syndrome.” Hormel admitted Westling had sustained a work-related injury to his right shoulder, but denied that injury caused any permanent disability.

Following an arbitration hearing in September 2008, the deputy workers’ compensation commissioner determined Westling had failed to establish “a

causal . . . relationship between his January 5, 2006 injury and his claimed permanent disability.” Westling appealed, and the deputy’s decision was affirmed and adopted by the commissioner.

Westling sought rehearing, arguing the commissioner needed to decide a matter of first impression, namely “whether for the purposes of Iowa Code section 85.34(2), the definition of permanent impairment contained in the A.M.A., *Guides to the Evaluation of Permanent Impairment*, was synonymous with the judicial definition of functional disability.” The commissioner denied Westling’s request for rehearing, stating:

While claimant cites numerous errors alleged in the agency decision, he more particularly cited to the need for the agency to address its definition of impairment. The core of claimant’s argument is that it was in error for the agency to determine he had sustained no permanent impairment despite the surgical procedure of July 10, 2006, a procedure that claimant describes in near-complete detail. Claimant’s argument that such a procedure would result in some impairment, however minor, is persuasive.

The commissioner nevertheless found the

presiding deputy, and the undersigned on appeal, relied upon the undisputed medical evidence that claimant’s work was not a cause of a permanent bilateral shoulder condition. The medical opinions were convincing and supported the conclusion that claimant had not sustained permanent impairment or disability resulting from his work.

Westling filed a petition for judicial review raising several issues, including whether the agency erred in determining his January 5, 2006 work injury was not the cause of permanent disability. The district court rejected that issue as follows:

Westling also contends the commissioner erred in not applying the proper definition of impairment for purposes of determining industrial disability. . . . Westling asserts that because

the surgery performed on his shoulder included permanent removal of part of the subacromial bursa, part of the membrane covering the acromion, some dead tissue, and the hook on the front of the acromion it was a per se impairment based on [the *Guides*] definition [of impairment] because it was a loss or derangement of a body part.

The Court agrees with the commissioner that Westling's argument that such a surgical procedure may result in some impairment under the *Guides* definition, however minor, may have some merit. However, there was no medical evidence whatsoever in the record to that effect, and based on the nature of the claimed permanent impairment here the Court declines to make an impairment or disability determination without such evidence. The uncontroverted, well-supported medical evidence was that Westling's work-related injury and resultant surgery was not a cause of a permanent impairment or disability. . . . There is substantial evidence in the record to support the commissioner's determination that Westling failed to meet his burden of proof to show a causal relationship between his January 5, 2006 work injury and his claimed permanent disability.

Westling appeals.

## ***II. Discussion.***

Westling sought permanent partial disability benefits under Iowa Code section 85.34(2)(u) (2009). In order to recover, he was required to prove by a preponderance of the evidence that the stipulated work-related injury was a proximate cause of the claimed disability. See *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 752 (Iowa 2002); see also *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 220 n.2 (Iowa 2006). The commissioner found Westling failed to meet that burden of proof due to the lack of medical evidence establishing a causal connection. Westling challenges this finding on several grounds, the first being that the commissioner did not apply the correct definition of "impairment" in his analysis. Our review of this issue is governed by Iowa Code section 17A.19(10)(c).

Westling's argument is as follows: The Fifth Edition of the *AMA Guides to the Evaluation of Permanent Impairment* has been adopted by agency rule and case law "as a guide for determining permanent partial disabilities." See Iowa Admin. Code r. 876-2.4; *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834, 839 (Iowa 1986). The *Guides* define "impairment," which Westling asserts "is synonymous with the statutory term 'disability' when it is used in the sense of functional disability," as "a loss, loss of use, or derangement of any body part . . . ." *A.M.A. Guides to the Evaluation of Permanent Impairment* § 1.2a, at 2 (5th ed. 2001). "Derangement" is defined by the *Guides* to include "a change from a normal or 'preexisting' state," "anatomic loss," or "damage to the . . . body structure." *Id.* Westling accordingly argues that because his July 2006 surgery involved the "removal of parts of his shoulder anatomy," he established his work injury caused a permanent partial disability as a matter of law. We do not agree.

The administrative rule Westling's argument is based on provides:

The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.24(2) "a" to "s." The extent of loss or percentage of permanent impairment may be determined by use of the Fifth Edition of the guides and payment of weekly compensation for permanent partial scheduled injuries made accordingly. . . . Nothing in this rule shall be construed to prevent the presentations of other medical opinions or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the Fifth Edition of the AMA guides.

Iowa Admin. Code r. 876-2.4. “Under this rule, the *Guides* are just that—guides, and the commissioner is not bound to follow them.”<sup>1</sup> *Sherman v. Pella Corp.*, 576 N.W.2d 312, 319 (Iowa 1998); accord *Lauhoff Grain Co.*, 395 N.W.2d at 839.

We accordingly reject Westling’s argument that the commissioner erred in failing to adopt the definition of “impairment” set forth in the *Guides* in determining he did not establish a causal connection between his work injury and claimed disability. We turn next to the question of whether substantial evidence supports the commissioner’s causation determination. See Iowa Code § 17A.19(10)(f)(1) (defining substantial evidence as evidence of the quality and quantity “that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance”).

An independent medical examination was performed by Dr. Mary Shook in April 2008 at Westling’s request. After examining Westling and reviewing his medical records, Dr. Shook prepared a report concluding Westling’s current complaints regarding his right shoulder were “most likely due to arthritic changes.” She explained,

Review of records referring to the right shoulder indicates arthritis diagnosed at the time of surgery. It is even noted that a rotator cuff tear had healed. Arthritis is also noted in the knees and neck. I suspect arthritis is present in the left shoulder as well. . . . Repetitive motion injury because of work assignments is best

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<sup>1</sup> We additionally observe the rule applies only to determinations of the extent of permanent partial disabilities resulting from scheduled injuries. See Iowa Admin. Code r. 876-2.4; *Sherman*, 576 N.W.2d at 322 (“[W]hen relying on medical evidence, the commissioner may use the *Guides* for determining the disability of a scheduled member.”). Injuries to the shoulder are unscheduled. See *Prewitt v. Firestone Tire & Rubber Co.*, 564 N.W.2d 852, 854 (Iowa Ct. App. 1997). And, in any event, the threshold question here concerned the causal connection between Westling’s work injury and claimed disability, not the extent of that disability.

diagnosed in relationship to actual tasks performed. Since Mr. Westling retired in November, 2006 there has been no repetitive motion at the workplace. Thus I can safely conclude that his current symptoms are NOT from repetitive tasks due to work assignments. Any current exacerbation of pain in the shoulders would more likely be related to recent use not prior work use. Arthritis causes increased pain and decreased function over time. With a reasonable degree of medical certainty, his current shoulder complaints are due to arthritis, not cumulative trauma.

Westling's treating physician, Dr. Hough, likewise opined Westling would not "have any permanent impairment secondary to his surgical intervention. I believe that he has done quite well. . . ."

Westling argues the commissioner erred in relying on the opinions of Drs. Shook and Hough. He asserts that in adopting those opinions, the commissioner ignored Dr. Hough's surgical record, which "alone constituted uncontroverted medical evidence of 'derangement' of the shoulder structure," as well as Westling's own testimony regarding the impairments to his shoulder. We do not agree.

"Expert testimony is ordinarily necessary to establish a causal connection between the injury and the disability for which benefits are sought." *Grundmeyer*, 649 N.W.2d at 752; see also *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 16 (Iowa 2007) ("Causal connection is essentially within the domain of expert testimony."). The commissioner determined the opinions of Drs. Shook and Hough were entitled to considerable weight, especially given the lack of any contradictory expert testimony in the record. The commissioner did not find Westling's testimony that he retired from Hormel as a result of his "significantly diminished physical capacities" believable. It was the commissioner's prerogative to weigh the evidence in this fashion. See *Sherman*, 576 N.W.2d at 321. Westling's



arguments to the contrary essentially request us to reweigh the evidence. It is not the role of the district court, or this court on appeal, to do so. See *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007). In light of the foregoing, we conclude, as did the district court, that substantial evidence supports the agency's finding that Westling did not suffer a permanent partial disability as a result of his January 5, 2006 work injury.

### ***III. Conclusion.***

Westling's remaining arguments depend on our acceptance of his claim that the commissioner erred in determining he failed to establish a causal connection between his injury and claimed disability. Because we have rejected that issue for the reasons stated above, we need not and do not reach these issues. The judgment of the district court affirming the commissioner's decision denying Westling permanent partial disability benefits for his right shoulder injury is affirmed.

**AFFIRMED.**